

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ranees Surut Soondree Dossee v. Baboo Prosunno Coomar Tagore, from the High Court of Judicature at Fort William, in Bengal; delivered December 16th, 1870.*

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Present:—

SIR JAMES W. COLVILLE.

THE JUDGE OF THE ADMIRALTY COURT.

SIR JOSEPH NAPIER.

THE Appellant and the Respondents in this case are the representatives of two Zemindars, who, some six-and-thirty years ago, engaged in litigation concerning the title to certain chur land thrown up by the river Brahmapootra.

This litigation was begun by a suit, brought in 1834, by Prosunno Coomar Tagore, whom it will be convenient to describe as the Respondent, for the recovery of 5000 beegahs of the land in question. In the course of that suit, and in the year 1835, a map of the land in dispute, with the land and water immediately surrounding it, was made by an Ameen, named Goureepersaud Moitra, under the authority of the Court; and in that map the different churs are delineated, and marked with different numbers, from 1 to 7 inclusive.

This first suit was successful; and Prosunno Coomar Tagore obtained a decree for about 5000 beegahs of chur land. In 1845 he brought a second suit for 14,000 beegahs of like land, and obtained a decree from the Court of First Instance. The Defendants then appealed; and pending their Appeal, and in July, 1849, the parties came to a compromise, which was embodied in a decree of the Sudder Dewanny Adawlut, dated the 3rd of July, 1849, and was thereby directed to be carried into effect.

This compromise is set out at page 17 of the

Record. Its effect was that the churs marked in Gource Persaud's map as Nos. 5 and 7, with 1663 beegahs and 15 cottahs of chur No. 6, were to belong to those who are represented by the Appellant; and that the churs Nos. 1, 2, 3, and 4, with the rest of chur No. 6, were to belong to the Respondent. The boundaries, if the parties differed about them, were to be settled by arbitration; and if the parties could not agree to appoint arbitrators, were to be fixed through the Court Amcen in execution of the decree.

If then this map, which was the basis of the compromise, had correctly described the land as it then existed, nothing remained to be done, but to measure off the 1663 and odd beegahs from chur No. 6, and to put the parties into possession of their respective shares.

Unfortunately the land, which was the subject of the compromise, was in some sort the creation of the river Brahmapootra, which is said after each annual flood to be apt to shift its course, and to effect considerable changes in the alluvial deposits on either side of its channel. And thus it came to pass, that as soon as the parties proceeded to carry out the compromise, a contest arose whether, either between 1835 and 1849 or at some subsequent period, the river had not so changed its course as materially to alter the configuration of some of the seven churs, and their bearings to its main stream. The only effect, therefore, of the compromise was to convert a dispute touching the title to lands into one touching the identification of parcels; the principal question being not how chur No. 6 was to be divided, but where churs Nos. 5 and 7, which unquestionably belonged to the Appellant's Zemindary, were to be found. And this dispute has given rise to the intermittent litigation which, after lasting for more than fifteen years, was, in 1863, closed by the decree now under Appeal.

The following is a short summary of that litigation:—Some time after 1849, and before April, 1853, the Respondent was put into possession of a considerable part, if not of the whole, of so much of the land contained in the seven churs as then lay on the western side of the Brahmapootra; and the possession so taken was confirmed by an order

of the then Principal Sudder Ameen of Rungpore, dated the 19th of April, 1853. But that order was, on the Appeal of the other party, set aside by Mr. Dunbar, one of the Judges of the Sudder Dewanny Adawlut, whose order of the 24th of September, 1853, directed the Principal Sudder Ameen to re-open the inquiry, but apparently did not disturb the possession already given to the Respondent. Some delay in giving effect to this order took place, in consequence of the Respondent's having contrived to strike the execution case off the file: but it was restored under an order of the Sudder Dewanny Adawlut, dated the 14th February, 1855.

The case was then investigated by the Principal Sudder Ameen; each party filed a map before him; he himself held a local investigation and made or caused to be made the map of 1855; and finally on the 27th of June, 1856, passed an order overruling the objections made to the Record of his investigation by the Respondent in the Petition set forth at page 5 of the Record, declaring the possession given to the Respondent to be null and void, and directing that possession should be given to the parties in accordance, as their Lordships understood the order, with the present contention of the Appellant. No change, however, seems ever actually to have been made in the possession of the land, of which possession was given by the Moonsiff. The Respondent appealed against the last mentioned order, and the question was again re-opened by Mr. Torrens' order of the 30th of January, 1857, which remitted the case to the Principal Sudder Ameen, with directions that in respect of those parcels which he had given to the then Respondent (the present Appellant), he should again allow execution of the decree, and after that prepare a map (better than the present map), so that it might clearly appear for the perusal of the Appellate Court, and in other respects what was the former and present course of the River Brahmapootra over the disputed lands, as stated in the map of Gourcepersaud Ameen.

The execution of this order was somewhat delayed by the rainy season, during which a local investigation was impossible, but on the 2nd of December, 1857, the Principal Sudder Ameen



passed an order for the appointment of an Ameen acquainted with measurement by the compass. From one cause or another, however, nothing effectual was done under this last order until December, 1860, when Kalidoss Moitro the Ameen proceeded to the spot, made a careful local investigation, prepared the map which bears his name, and on the 13th of April, 1861, filed the elaborate report which is at page 85 of the Record. That report, though it did not precisely adopt the representations of either party, in the main supported the contention of the Appellant. It was adopted by the Principal Sudder Ameen, who, on the 1st of August, 1861, passed a decree finding that churs Nos. 5 and 7 were where the Appellant placed them, and not where the Respondent placed them, directing that possession should be given accordingly, and also giving the necessary directions for ascertaining and making over that part of chur No. 6 (as to the position of which there seems to be no controversy) which under the compromise belonged to the Appellant.

The Respondent appealed against this decree. The High Court reversed it, finding that churs Nos. 5 and 7 were where the Respondent placed them, and varying the Principal Sudder Ameen's decree accordingly. The present appeal is against that decree, and the first question for their Lordships' determination is whether it can be supported. It rests entirely upon the assumption that churs Nos. 5 and 7, which unquestionably were on the west of the main stream of the Brahmapootra when the map of Gouree Persaud was made in 1835, are now by reason of the altered course of that river on the eastern side of it. If that is not made out, the reasons assigned for the judgment wholly fail.

Upon what does this assumption purport to be founded? "On an examination of the maps filed in the cause, and on the explanations and arguments of the pleaders on both sides." What the latter may have been their Lordships are unable to say. But having given full consideration to the able argument of Mr. Doyne on behalf of the Respondent; and having carefully examined the maps, they are unable to see any satisfactory grounds for coming to the conclusion contrary to the finding of those who have investigated the question on the

spot; that the river has since 1835, by making for itself a new channel to the west of its former channel, so changed its course as to put either of the churs described by Gouree Persaud as Nos. 5 and 7, or whatever may remain of either of them, its eastern instead of its western bank.

It would be strange indeed if this conclusion necessarily resulted from a mere comparison of the maps, since it is opposed to the expressed convictions of the Ameen Kalidoss Moitro, who made the last and most scientific of the maps, and to that of the Principal Sudder Ameen, who conducted the local investigation and made the map of 1855. Mr. Doyne, indeed, has argued that the conclusion of the High Court may have been an inference, and would have been a legitimate inference, from the application of what he treats as the known law of the formation of churs to certain newly-formed chur land appearing in parts of Kalidoss Moitro's map. But the High Court has not assigned this as one of the grounds of its judgment. Nor are their Lordships, considering the disturbing forces which may exist in a river of so vast a volume and of such irregular action as the Brahmapootra, and also the positions of the several portions of chur land indicated in the map, by any means satisfied that the inference is legitimate, or so certain that it ought to outweigh the positive findings of the Ameen.

Again the High Court observed that the Principal Sudder Ameen had not, in their opinion, duly considered the landmarks by which in both maps, when duly compared, the situation of churs 5 and 7 may be satisfactorily identified. The Court has omitted to state specifically to what landmarks it refers as instances of this omission. The instance most pressed in argument has been that of the tamerind trees appearing on the east side of the river in Gunga Persaud's map. But the real position of those trees, if they still exist, was also the subject of controversy; and after investigations on the spot, the Ameen rejected the Respondent's theory concerning it. There is nothing to show that he was wrong in this. It is obviously impossible to draw that conclusion from Gungapersaud's map, which, it is admitted, was not made by compass, or according to scale,

Another point made in the argument, though not adverted to in the Judgment, is the bearing of the village of Kompopoor to the land alleged by either party to be chur No. 5. It cannot be said that the Ameen has neglected to consider this landmark. And his explanation of the discrepancy in this respect between his map and that of Gungapersad, viz. : that the village, of which the position is very loosely indicated, is erroneously placed on the latter to the south instead of to the east of the river Jhelye, appears to their Lordships to be plausible.

Their Lordships then are unable to see any satisfactory grounds for the assumption which is the foundation of the Judgment of the High Court. They would themselves be very slow to interfere with the Judgment of an Indian Court upon a question of this nature. But they have to deal here with conflicting Judgments, of which one is founded on a long and careful local investigation; and the other, overruling the former, is supported by no reasons that their Lordships can pronounce to be satisfactory. And their Lordships may observe that the considerations which make them reluctant to set their Judgment against that of an Indian Court upon such a question as this, ought to influence in some degree the Appellate Court in India, and to prevent its interference with the result of a local inquiry, except upon clearly defined and sufficient grounds. Such grounds the Appellate Court may have thought it had in this case, but it has failed to express them. Against its Judgment their Lordships have now to weigh the elaborate report of the Ameen and the Judgment founded upon it. The integrity of the Ameen is unquestioned; his careful and laborious execution of his task is proved by his report; he has not blindly adopted the assertions of either party; and without going minutely into details, their Lordships think it sufficient to say that they see no ground for impugning the accuracy of his conclusion upon what they conceive to be the broad and cardinal issue upon which the determination of this case depends, viz. : whether the lands which represent churs No. 5 and 7 of Gungapersad's map are now on the east or still on the west of the main channel of the Brahmapootra. On the contrary, they believe the conclusion of the



Ameen to be correct. And they are fortified in that conviction by the following considerations.

It is to be observed that this controversy was by no means of recent date. The question was not whether the change alleged had been effected by the action of the river between 1835 and 1863. It appears by the Respondent's Petition at page 5 of the Record and the maps that his contention was certainly as early as 1855, and possibly as early as the Moonsiff's proceeding, that the lands which represented the churs Nos. 5 and 7 of the compromise were then on the eastern side of the main course of the river. That this was in fact the case in 1849 is in the highest degree improbable. Though it is too clear that the parties by a compromise made upon loose data merely shifted the ground of contention instead of determining their disputes: it is almost inconceivable that they should have drawn and executed, as they did, the instruments of compromise upon the footing of Gungapersad's map, without adverting to so great a change in the position of the churs relatively to the main channel of the river, if such a change had then taken place. The change then, if it ever really took place, must have taken place between 1849 and the Moonsiff's proceeding, or the year 1855; and in that case it might easily have been proved. It would then have been recent, and notorious, yet in 1855 the Principal Sudder Ameen after local investigation decided against the Respondent.

Again their Lordships upon the evidence see no reason to doubt that the land which the Respondent treats as Chur No. 5, is in fact the Pookamavee chur, and an accretion on an estate which never belonged to the Appellant's family, and now belongs to Government,—an estate of which the Moonshee Chur, one of the landmarks of the map of 1835, formed part. There is nothing which induces their Lordships to believe that any of those whom the Appellant represents were ever in possession of that chur. Yet the High Court, without adverting to this point, affirmed it to be the chur No. 5 of the compromise, and directed that the Respondent should be maintained in the possession of it.

Upon the whole then their Lordships have come

to the conclusion that it is their duty to advise Her Majesty to allow this Appeal, to reverse the decree of the High Court; to direct that in lieu thereof the Appeal to that Court from the decree of the Principal Sudder Ameen be dismissed, and the last-mentioned decree affirmed with costs. The Appellant must also have her costs of this Appeal.